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Supreme Court of the United States

OCTOBER TERM, 1966

NO. 1443

UNITED BOND AND MORTGAGE CORPORATION,
Petitioner,

VERSUS

CROWN CENTRAL PETROLEUM CORPORATION,
Respondent

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

QUESTION PRESENTED

Was not the United States Court of Appeals for the Fourth Circuit correct in affirming the dismissal of the Complaint in this action where the same issues attempted to be raised in said Complaint had been litigated in a State Court action between the petitioner and the respondent and a final judgment rendered upon said issues by the State Court adverse to the petitioner prior to the commencement of this action?

STATUTES AND RULES INVOLVED

In addition to the statutes set forth in the Petition of the petitioner herein, the following Rules are applicable herein:

Rule 19, Revised Rules of the Supreme Court of the United States;

Rule 23(4), Revised Rules of the Supreme Court of the United States.

STATEMENT

The identical matter as to which the petitioner complains in this action, the alleged impropriety of the assistance by respondent's counsel in the preparation of a report by the Master in Equity for Richland County, South Carolina, upon which a State Court judgment was allegedly based, had already been litigated once to final judgment adverse to the petitioner in a State Court action prior to the commencement of this action.

In the Complaint in this action the petitioner seeks to have declared void a judgment of the respondent against the petitioner which was rendered in an action brought in the Court of Common Pleas for Richland County, South Carolina. The said judgment set aside as in fraud of creditors a conveyance of certain real property to the petitioner by another corporation controlled by the same interests. Following the entry of said judgment, the respondent brought another action in the same State Court against the petitioner and others to set aside as collusive and in fraud of creditors two judgments taken against petitioner by another corporation controlled by the same interests which were obstructing a judicial sale of the property the deed for which had been set aside in the earlier action. The earlier action setting aside the fraudulent deed to petitioner was later consolidated with the second action setting aside the collusive judgments against petitioner.

In the consolidated action in the State Court, after the rendition of a report by the Master favorable to respondent and adverse to petitioner, petitioner raised the same issues which it now attempts to raise in the Complaint in the present action. Petitioner filed in the consolidated action

a document entitled "Notice of Motions and Additional Exceptions to Master's Report" whereby petitioner moved the State Court for an Order "setting aside, and declaring null and void, as a fraud already perpetrated by the [respondent] upon this Court and the [petitioner] in this action" (page A-11 of Appendix of Appellee below [respondent herein] which shall hereinafter be referred to as Appellee's Appendix) the same judgment which petitioner seeks in the present action to have declared void. The petitioner's said Motion in the State Court, as in this action, was made upon the allegation that the Master's Report upon which the aforesaid judgment was allegedly based and "all or substantially all of said findings of law and fact, particularly those purporting to find fraud and collusion against [petitioner], were actually conceived, designed, made, and written, solely, exclusively, and *secretly*" by respondent's attorneys and thus without notice to petitioner, "for the purpose of deceiving this court" (page A-11, Appellee's Appendix). Petitioner also moved for additional time to file further Exceptions and made an additional Exception that the Master "erred in delegating his duties in connection with making and writing each and all findings contained in said report to the plaintiff's attorney." (page A-12, Appellee's Appendix).

In the aforesaid consolidated action, the respondent moved to strike the aforesaid "Notice of Motions and Additional Exceptions to Master's Reports" filed by the petitioner and filed a verified Return stating, among other things, that "while counsel for the plaintiff, under the instructions of the said Master, assisted in the preparation of the said Master's Reports, the said Reports are those of the Master himself and bear his signature." (page A-14, Appellee's Appendix).

Petitioner thereafter, in the consolidated action, moved for an "Order referring this matter to the Honorable Master and asking that he advise and report to the Court the extent to which the plaintiff's attorney's were allowed

to draw and author the reports in question, and to report such other facts as he deems appropriate to the determination of the legal issues involved." (page A-17, Appellee's Appendix).

Thereafter, Charles F. Cooper, as attorney for the petitioner and the defendant Elmwood Properties (another corporation controlled by the same interests) and other defendants, filed a Cross-Complaint in the consolidated action against respondent and its attorneys seeking personal judgment against them on behalf of Elmwood Properties based upon the same allegations with respect to the preparation of the Master's Reports. This action seeks similar relief against respondent. The respondent and its attorneys moved to strike the said Cross-Complaint and also filed a Return and Answer thereto (page A-17, Appellee's Appendix).

All of the foregoing matters were thereafter fully argued by counsel for the parties before the Honorable Clarence E. Singletary, Presiding Judge of the Court of Common Pleas. Judge Singletary thereafter on December 3, 1963, issued his Order in the consolidated action ruling against the petitioner on all issues which had been raised, including the aforesaid contentions of the petitioner relative to the assistance of counsel in the preparation of the Master's Reports. Judge Singletary's Order relative to this issue provided as follows (page A-28, Appellee's Appendix):

> "I am of the opinion that all of the motions of the defendant Charles F. Cooper, acting as attorney, seeking relief on the basis of the participation by plaintiff's counsel in the preparation of the Master's Reports ought to be denied. As indicated above, I have made a thorough examination of the record of this case and find that the Master's reports are fully supported by the evidence and that his conclusions of law are sound and in accordance with the law of this State. The Master is one of the most respected jurists in this State, and the reports bear his signature and

are his own reports. Furthermore, the practice is well established in this State whereby the assistance of successful counsel is sought by judges, as well as masters, in preparation of their decrees and reports. In addition, my decision is in accord with our Supreme Court's ruling in the case of *Stepp v. National Life & Maturity Ass'n. of Washington*, 37 S. C. 417, 16 S. E. 134 (1892).

"The pleading styled 'Cross-Complaint' against the plaintiff and its counsel ought to be dismissed. It is based upon the alleged impropriety of the assistance by counsel for the plaintiff in the preparation of the Master's Reports. I have found, and do hereby find, that there was not any impropriety in such assistance and that no error prejudicial to the defendant was made by reason of such assistance . . . ."

The respondent did not appeal from the aforesaid Order of Judge Singletary. An appeal was taken from said Order by Charles F. Cooper and another defendant on other grounds, and no exceptions were filed in that appeal relative to the preparation of the Master's Reports. The Order of Judge Singletary was thereafter affirmed by the Supreme Court of South Carolina in an opinion reported in 244 S. C. 588, 138 S. E. 2d 38 (1964), and the said Order has now become final as to all parties.

Following the aforesaid decision of the Supreme Court of South Carolina, the respondent commenced the present action in the United States District Court for the District of South Carolina, Columbia Division, seeking a money judgment against the respondent and an Order declaring void the aforesaid State Court judgment of respondent against petitioner which set aside the aforesaid conveyance as fraudulent. As in the former State Court action, the petitioner seeks said relief in the present action on the claim that the said judgment had been granted on the basis of a report secretly prepared by the attorneys for the respondent rather than by the Master himself.

The respondent, on March 16, 1966, filed a Notice of Motion to Dismiss and a Notice of Motion for Summary Judgment, on the grounds that the matters raised in the Complaint were *res judicata* and that the District Court was without jurisdiction of the action (pages A-1 and A-2, Appellee's Appendix). Respondent attached thereto exhibits from the previous State Court proceedings showing that the same issues had been raised in the State Court and decided adversely to the petitioner as described hereinabove.

After an exchange of Interrogatories and Answers thereto, the petitioner filed a Motion for Summary Judgment, dated April 15, 1966, based upon the affidavit of its counsel and the Interrogatories and Answers thereto.

The said Motions were heard by the Honorable Robert W. Hemphill, United States District Judge for the District of South Carolina, who issued his Order dated August 23, 1966, dismissing the Complaint in this action, with prejudice (Brief and Appendix of the Appellant below [petitioner herein] page 10). On appeal by petitioner, the Court of Appeals for the Fourth Circuit, in a *per curiam* opinion dated March 10, 1967, held that the District Court "properly refused to entertain this collateral attack upon a final judgment of a state court having jurisdiction of this civil litigation" and affirmed the Order of Judge Hemphill.

The petitioner thereafter filed Petition for a Writ of Certiorari.

ARGUMENT

I. Introduction.

The factual presentation made to this Court by the petitioner in its Petition for Writ of Certiorari is so inadequate and misleading that the only real issue in this proceeding is completely obscured. The sole issue with which the Court is concerned in the present proceeding is the effect upon this action of a prior final State Court judg-

ment upon the same matters sought by the petitioner to be raised in this action and litigated a second time.

The respondent's Motion to Dismiss and Motion for Summary Judgment, the Order of the District Court dismissing the Complaint, and the decision of the Court of Appeals for the Fourth Circuit affirming that Order are all based upon the prior State Court adjudication of the matters sought to be raised in the present action. Yet the petitioner has not even mentioned in its Petition the prior State Court proceedings or the final judgment rendered therein. The petitioner's omission of these controlling facts results in a misleading presentation of the issues and is clearly contrary to Rule 23(4) of the Revised Rules of this Court which requires an accurate and clear presentation of "whatever is essential to a ready and adequate understanding of the points requiring consideration" on a petition for a writ of certiorari. Dismissal of the Petition is justified for that reason alone. When the State Court proceedings and the final judgment rendered therein are considered, as they must be, it is readily apparent that the reasons posed by the petitioner for this Court to grant a writ of certiorari are entirely inappropriate for this proceeding and are of no merit whatsoever.

Although respondent does not consider that the petitioner's arguments contain sufficient merit to justify extended discussion, respondent will consider them in turn hereinbelow for the convenience of this Court. For the sake of simplicity, argument will be arranged to correspond with the arrangement of the Petition herein.

II. *The Dismissal of the Complaint in this Action Was Not a Denial of Due Process as Urged by Petitioner Since the Same Issues Attempted To Be Raised Therein Had Previously Been Litigated to Final Judgment Adverse to Petitioner in an Action between Petitioner and Respondent in the State Court.*

The petitioner asserts as a first reason (paragraph 1, page 3) that the District Court was required to entertain

the present action under the provisions of Sections 1331 and 1332 of Title 28, United States Code, and that the refusal of the District Court to assume jurisdiction of this action under said statutes constitutes a denial of due process in violation of the Fifth Amendment. Such a position is clearly untenable. The petitioner fails to take into account the fact that the same matters sought to be raised in the present action had previously been decided adversely to petitioner on petitioner's own motion in a State Court action as described hereinabove. The petitioner took no appeal from that decision, and the same became a final judgment.

The petitioner had full opportunity to seek review of the adverse State Court judgment by appeal to the Supreme Court of South Carolina and thence to the Supreme Court of the United States, if necessary, but petitioner chose not to follow those appropriate appellate channels. Instead, the petitioner seeks to attack said State Court judgment collaterally and, in effect, to review the State Court judgment in the District Court of the United States by means of the present action. Such a procedure is clearly prohibited by the settled principles of *res judicata* and the jurisdictional limitations of the District Courts of the United States.

The statutes sought to be invoked by the petitioner (Sections 1331 and 1332 of Title 28, United States Code) grant to the District Courts of the United States only *original* jurisdiction. It is well established that having failed to pursue his rights, if any, through the appointed channels of appeal to the Supreme Court of the United States, a litigant may not thereafter assert such rights, if any, by action in the District Court of the United States. The entertaining of such an action by the District Court would constitute the exercise of a nonexistent appellate jurisdiction. *Rooker v. Fidelity Trust Company*, 263 U. S. 413, 44 S. Ct. 149, 68 L. Ed. 362 (1923); *Lavasek v. White*, 339 F.

2d 861 (10th Cir. 1965); *Application of Heller*, 39 F. Supp. 310 (M. D. Penn. 1941).

Furthermore, the doctrine of *res judicata* is clearly a bar to relitigation in the Federal courts of matters already litigated to final judgment in a State court proceeding. As noted by this Court in *Angel v. Bullington*, 330 U. S. 183, 67 S. Ct. 657, 91 L. Ed. 832 (1947), in which an action previously dismissed in the State Court was later attempted to be renewed in Federal Court (91 L. Ed. 832, 838):

> ". . . To allow such a second suit is to say that a federal right in issue in a State court evaporates because the State court calls it a State right and the litigant accepts the decision. *If tolerated, our federal system would afford fine opportunities for needlessly multiplying litigation in this way. The doctrine of res judicata is a barrier against it.* Litigation is the means for vindicating rights, but it may also involve unwarranted friction and waste. *The doctrine of res judicata reflects the refusal of law to tolerate needless litigation. Litigation is needless if by fair process, a controversy has once gone through the courts to conclusion.* Compare, e.g., Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322, U. S. 238, 244, 88 L. Ed. 1250, 1255, 64 S. Ct. 997. *And it has gone through, if issues that were or could have been dealt with in an earlier litigation are raised anew between the same parties.* Chicot County Drainage Dist. v. Baxter State Bank, 308 U. S. 371, 84 L. Ed. 329, 60 S. Ct. 317, 41 Am Bankr Rep (NS) 508." (Emphasis supplied).

The long-established doctrine has been well stated by this Court in the maxim *"Interest reipublicae ut sit finis litium"*. In *Fayerweather v. Ritch.*, 195 U. S. 276, 25 S. Ct. 58, 49 L. Ed. 193 (1904), this Court said (195 U. S. 276, 299):

> ". . . Private right and public welfare unite in demanding that a question once adjudicated by a court of

competent jurisdiction shall, except in direct proceedings to review, be considered as finally settled and conclusive upon the parties. *Interest reipublicae ut sit finis litium* . . . ."

It is therefore clear that the dismissal of the Complaint in this action is clearly not a denial of due process to petitioner but was in accord with well established principles of law.

III. *The Decision of the Court of Appeals for the Fourth Circuit in the Present Case Is Not Inconsistent with Its Previous Opinion in Chicopee Manufacturing Corporation v. Kendall Company, 288 F. 2d 719 (4th Cir. 1961).*

Petitioner asserts as a second reason (Paragraph 2, page 4), that the decision of the Court of Appeals for the Fourth Circuit in the present case is inconsistent with the previous holding of that Court in *Chicopee Manufacturing Corporation v. Kendall*, 288 F. 2d 719 (4th Cir. 1961), concerning the preparation by an attorney of an opinion for a United States District Judge. In that contention petitioner is plainly in error. In the present case the Court of Appeals for the Fourth Circuit made no decision whatsoever regarding the assistance of counsel in the preparation of the Master's Report in question. As stated above the decision was on other grounds.

A final judgment regarding the question of the propriety of such assistance was rendered by the State Court adverse to the petitioner's contentions prior to the commencement of this action. Established principles of law relative to *res judicata* and jurisdiction required dismissal of the Complaint in this action without regard to the question of the propriety of the alleged assistance of counsel in the preparation of the Master's Report. The Court of Appeals was therefore not called upon to render, and did not in fact render, any opinion with regard to that question. It is therefore apparent that the decision of the Court of Appeals

for the Fourth Circuit in the *Chicopee* case is not involved in any way in the decision in the present case and that the two decisions cannot in any sense be regarded as inconsistent.

Moreover, even if the Court of Appeals in the present case had actually rendered a decision on the merits of the question of the propriety of the assistance of counsel in the preparation of the Master's Report, such a decision could not properly be considered as inconsistent with its decision in the *Chicopee* case.

The *Chicopee* case involved the preparation of an opinion of a District Judge whereas the present case involves the preparation of a report for a master. The master is an officer of very limited authority under South Carolina practice (Chapter 16 of Title 10, Code of Laws of South Carolina, 1962) and the report of the master in equity matters such as the proceeding in the State Court herein concerned is of very limited significance. *Cheatham v. Cheatham*, 245 S. C. 579, 141 S. E. 2d 813 (1965); *Welborn v. Page*, 247 S. C. 554, 148 S. E. 2d 375 (1966). In the *Cheatham* case the South Carolina Supreme Court said (141 S. E. 2d 813, 815):

> "In an equity case, the court is the judge of both the facts and the law and reference of a cause to a master is for the chancellor's assistance and enlightenment. Findings and recommendations of a master or referee do not relieve the chancellor of his responsibility to decide from the entire record, by his own judgment, any issues presented to him by exceptions to the report. See Baylor v. Bath, 189 S. C. 269, 1 S. E. 2d 139, which reaffirmed this principle after some confusion thereabout had resulted from the opinion in Mitchum v. Mitchum, 183 S. C. 75, 190 S. E. 104.
>
> "As stated in Thorpe v. Thorpe, 12 S. C. 154, '[T]he judge, in the exercise of his chancery powers, is obliged to determine by his judgment or decree all questions of

> fact as well as of law * * *. *The judge is not bound by the finding of a referee * * * but is merely aided in arriving at the conclusion on which his judgment must rest. The action cannot be determined except by a judgment of the court in the exercise of its equity power, and that judgment can only be rendered by a judge of that court.*'" (Emphasis supplied).

In addition, the *Chicopee* case related solely to practice in the Federal Courts, whereas the present case involved practice in the State Court. The Court of Appeals for the Fourth Circuit in its opinion in the *Chicopee* case recognized that its decision was limited to the Federal practice in the following words (288 F. 2d 719, 724):

> ". . . In South Carolina, we are told, under a practice that prevails widely in the trial courts of the state, the opinion is frequently prepared at the request of the judge by the attorney for the successful party. But there is no authority in the Federal Courts that countenances the preparation of the opinion by the attorney for either side . . . ."

In any event, it is apparent from the record that the report of the Master was his own report and contained his own decision as to the various parts thereof. The Master requested the respondent's counsel to submit a proposed report and advised such counsel, "in considerable detail as to his findings, conclusions, and reasons and legal theories and other contents" of the proposed report. (Brief and Appendix of Appellant below [petitioner herein] page 27). In the *Chicopee* case, so far as appears, no such instructions were given.

Respondent accordingly submits that under any view of the matter, it is abundantly clear that the decision of the Court of Appeals for the Fourth Circuit in the present case cannot be considered as inconsistent with the *Chicopee* case.

Moreover, even if the decision of the Court of Appeals for the Fourth Circuit in this action should be viewed as

inconsistent with the earlier decision in the *Chicopee* case (which we submit it is not) any such inconsistency would not be an appropriate reason to grant certiorari. The conflict which may be a reason for the granting of certiorari as stated in Rule 19 of this Court must be a conflict with another Court of Appeals—not an alleged conflict between decisions of the same court.

IV. *The Instant Case Does Not Present a Proper Occasion for this Court to Consider and Rule upon the Question of the Propriety of Assistance by Counsel in the Preparation of a Report for a Master in Equity as Alleged Herein.*

As a final reason, the petitioner contends (Paragraph 3, page 4) that this Court, "in the public interest," should rule upon the merits of the question of the propriety of the assistance of counsel in the preparation of the Master's Report under the circumstances as alleged in the Complaint herein. Respondent submits that the well settled principles applied by this Court in considering petitions for certiorari clearly establish that this Court should not be called upon to exercise its discretion to grant a writ of certiorari for the purpose of ruling upon said question under the circumstances of this case.

As discussed hereinabove, the sole issue presented to the Courts below in the present case was the effect upon this action of a prior final judgment of the State Court adverse to the petitioner concerning the same matters sought to be raised in the Complaint in this action and as to which the petitioner now seeks a ruling by this Court. The District Court dismissed the Complaint on respondent's motion solely because of the bar of said prior final judgment under the well established doctrine of *res judicata* and the established law relating to the jurisdictional limitations of the District Courts. The affirmance of the Order of the District Court by the Court of Appeals for the Fourth Circuit is based upon the same grounds. In its Petition for Writ of Certiorari, the petitioner has not challenged those principles of

law or their application to the true facts of this case in any manner. On the contrary, petitioner has completely ignored those legal principles and the facts upon which they were applied in this case by making no mention of them whatsoever.

Consideration of the facts regarding the prior state proceedings and the final judgment rendered therein and the law applicable to those facts clearly discloses that no error has been committed by the dismissal of the Complaint in this action regardless of any decision which might be had regarding the propriety of the assistance of counsel in the preparation of the Master's Report in question. Clearly, no reason exists for this Court to review the decision of the Court of Appeals for the Fourth Circuit for the purpose of considering a question which will have no effect upon the ultimate result of the case. This Court has made it clear that it does not sit for the purpose of considering academic questions.

This Court has declared in Rule 19 of its Revised Rules that its discretionary power of review upon writ of certiorari will be exercised only when there are "special and important reasons" therefor. A question of academic interest only is clearly not within the scope of Rule 19, and this is especially true where the question embraces a constitutional issue. The applicable principles were clearly stated by this Court in its discussion of Rule 19 in *Rice v. Sioux City Cemetery*, 349 U. S. 70, 75 S. Ct. 614, 99 L. Ed. 897 (1955), wherein a Writ of Certiorari was dismissed as improvidently granted. In that case this Court pointed out (99 L. Ed. 2d 897, 901):

> "A federal question raised by a petitioner may be 'of substance' in the sense that, abstractly considered, it may present an intellectually interesting and solid problem. But this Court does not sit to satisfy a scholarly interest in such issues. Nor does it sit for the benefit of the particular litigants. (Magnum Import Co. v. Coty, 262 U. S. 159, 163, 67 L. Ed. 922, 924,

43 S. Ct. 531; see also Address of Mr. Chief Justice Vinson, before the American Bar Association, Sept. 7, 1949, 69 Sup. Ct. v, vi; Address of Mr. Chief Justice Hughes, before the American Law Institute, May 10, 1934, XI Proc Am Law Inst 313.) *'Special and important reasons' imply a reach to a problem beyond the academic or the episodic. This is especially true where the issues involved reach constitutional dimensions, for then there comes into play regard for the Court's duty to avoid decision of constitutional issues unless avoidance becomes evasion.* Cf. the classic rules for such avoidance stated by Mr. Justice Brandeis in Ashwander v. Tennessee Valley Authority, 297 U. S. 288, 341, 80 L. Ed. 688, 707, 56 S. Ct. 466." (Emphasis supplied)

In the final analysis, it is apparent that the petitioner, without citation of any applicable authority, and without presentation of the controlling facts, seeks by its Petition herein to have this Court permit re-litigation in the Federal Court of matters previously litigated and brought to legal conclusion by petitioner itself in the Courts of the State of South Carolina. Clearly, "the public interest" which the petitioner asserts as the basis of its cause in this Court will not be served by uprooting and casting aside the settled principles of law which give finality to judicial decisions and prevent repeated litigation of the same issues or by expanding the jurisdiction granted to the District Courts of the United States by the Congress to include review of state court decisions.

CONCLUSION

For the foregoing reasons and upon the foregoing authorities, respondent respectfully submits that the Writ of Certiorari sought by the petitioner herein should be denied.

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